ACT 12

Ordinance Amendment
Town of Cary, NC

1. Chapters 1, 2, 9, 22, 26, 28, 34, and 36 of Code of Ordinances, Town of Cary, North Carolina, and Chapters 2, 3, 4, 5, 7, 8, 11, and 12 of Appendix A, Land Development Ordinance, of the Code of Ordinances, Town of Cary, North Carolina, are hereby amended to read as follows:

**Item A Amendments Required by Recent Legislation**

### 3.1.6 Notice Requirements

(G) Certification of Notice by Non-Owner Applicant

Except for a Town initiated rezoning, when an application is filed to request a zoning map amendment and the application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall provide the notice and certification required by G.S. 160A-384, as amended from time to time.

### 3.1.14 COMMON REVIEW AND APPROVAL PROCEDURES: Discontinuance of Application Review; Permit Expiration

Development permit application review shall be discontinued, and development permits shall expire, pursuant to G.S. 143-755 and 160A-385.

**NOTE:** Additional sections throughout the LDO will be amended as needed to eliminate current references to application and permit expiration dates. These changes will be reflected in the final ordinance when presented to Council for final action.

### 3.4.1 REZONINGS: Rezonings Generally

(D) Procedure

(1) Initiation of Amendments and Filing of Applications

A rezoning may be initiated by any review or decision-making body; by application from any owner (or owner’s agent) of land for which the rezoning is requested; or by any owner or resident of land within five hundred (500) feet of the land for which the rezoning is requested, but only as long as the rezoning is not a “down-zoning” as defined in G.S. 160A-384. When the owner of land is not an individual, then the rezoning application shall include a disclosure statement that indicates the type of entity involved, and the name and address of each person who holds ten (10) percent or more of the business entity. When the owner of land is publicly-owned business entity, then the rezoning application shall include a disclosure statement that indicates the name and address of each person who holds twenty-five (25) percent or more of the business entity. An application requesting the rezoning shall be filed with the Planning department. Once the application has been filed with the Planning Department, no changes can be made to that application prior to the Town Council Public Hearing.

### 3.27.1 HISTORIC PRESERVATION: Designation of Historic Districts/Historic Landmarks
(A) Historic District Designation

(3) Application

An application for the designation of properties as a historic district may be submitted to the Planning Department by any of the following:

(a) The Historic Preservation Commission;
(b) The Town Council;
(c) The Planning and Zoning Board; and/or
(d) The Planning Department, and/or
(e) Any resident or property owner within the zoning jurisdiction of the town.

Item B  Department and Staff Title Changes

CODE OF ORDINANCES


(d) Any request for a modification to the Specifications must be submitted in writing to the Director of Water Resources Utilities or the Director of Transportation and Facilities, as appropriate, with supporting information that justifies the modification.

(1) The Director of Water Resources Utilities, Director of Transportation and Facilities, or an Assistant Town Manager may approve construction drawings which do not conform to the technical standards, technical specifications, or numerical values set forth in the Specifications if the requested modification (i) will not adversely impact public safety or Town infrastructure, and (ii) will maintain the intent and purpose of the Specifications.

(f) The Director of Water Resources Utilities or the Director of Transportation and Facilities may revise the Specifications from time to time as they deem necessary.


Sec. 2-91. Conditions of employment.

(a) Employment of immediate family and close relatives. "Immediate family" and "close relatives" are defined in subsection 2-92(q). The town prohibits the hiring and employment of immediate family and close relatives in authorized positions within the same work unit. The town also prohibits the hiring of any person into a temporary or authorized position who is an immediate family member or close relative of individuals holding the following positions: Mayor, mayor pro tem, town councilmember, town manager, deputy town manager, assistant town manager, town clerk, town attorney, finance director or human resources director. Otherwise, the town will consider employing families or related persons in the service of the town, provided that such employment does not result in immediate family or close relatives supervising relatives or having any responsibility for the payroll, hours of work, or human resource records of relatives, or for making any decision affecting the employment of a relative. Employment of individuals who are cohabiting or were formerly related, as defined by subsection 2-92(q), shall be subject to the same conditions as immediate family or close relatives. For the purpose of this division, "cohabiting" shall mean to live together in a sexual relationship when not legally married.
Additional conditions of employment for the deputy town manager, assistant town manager and department directors. Any deputy town manager, assistant town manager, or department directors may be terminated without following the process outlined in section 2-95 of this article. The town manager shall advise the town council of his intentions prior to terminating a covered employee under this provision. Such a termination may be recorded as a resignation and will entitle a covered employee who has completed initial probation to severance pay based on the following:

Sec. 2-92. Employee benefits, holidays and leaves of absence.

(i) Holiday compensation. An employee who works or is on paid leave the entire workday prior to and following a designated holiday will receive paid holiday leave. An employee of the town who is required to work on any designated holiday due to work schedule or at the direction of a supervisor is entitled to additional holiday compensation. The employee shall receive compensation at the regular rate for hours worked. In addition, such employee is also entitled to a choice of either compensation in the form of time off or pay, selected with the approval of the supervisor. Such compensation, whether in compensatory time or pay, shall be computed at a rate of time-and-one-half for the actual hours worked. Temporary employees, the deputy town manager, the assistant town manager, and all department and division directors shall be exempt from this provision. Departments with employees working 24 hours a day may elect to compensate those employees for working on the "true" holiday rather than the designated holiday.

(gg) Payment of leave upon separation. Regular employees and probationary employees who have completed six months' satisfactory service and given a minimum required notice shall be paid for accumulated vacation not to exceed 240 hours. Employees who are dismissed, all in full or in part, for detrimental personal conduct or grossly inefficient job performance shall not receive pay for accumulated vacation. All employees, except department directors, the deputy town manager, and the assistant town manager, are paid for any accumulated holiday leave upon separation. Any employees also shall be paid for accumulated compensatory time earned while nonexempt from the overtime provisions of the fair labor standards act. All remaining sick leave shall end and terminate without compensation when an employee separates from town employment.

Sec. 22-23. Damage to flowers, trees and shrubs.
Any person desiring to remove, destroy, cut, or severely prune, including the root system, any tree or shrub in or upon any public street right-of-way or public property owned by the town, shall first obtain the permission of the director of public works and utilities or designee. Such permission shall be granted upon a showing that such work is necessary for other permitted projects or for preservation of public safety. Any work performed must be done in strict compliance with the conditions set forth in granting such permission, except permission shall not be required for the development of any property for a site plan, as required under the land development ordinance. Individual permission shall not be required of public and private utilities, including CATV installations and water and sewer regulations by or at the direction of the town, provided that the company's written pruning and trenching specifications have first been received and approved by the director of public works and utilities.

Sec. 26-1. Administration and enforcement generally.
(a) The collection and removal of solid waste from premises in the town shall be under the jurisdiction of the director of public works and utilities. Enforcement of the provisions of this chapter shall be under the supervision of the director of public works and utilities.

Sec. 26-2. Right of entry.
The director of public works and utilities or any of his assistants shall have the right to enter at any reasonable time any premises for the purpose of making the inspections or investigations as required by this chapter.

Sec. 26-3. Definitions.
The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Director shall mean the director of public works and utilities of the town of Cary, or his agent.

Regulations shall mean regulations of the director of public works and utilities of the town of Cary, now or hereafter in effect, promulgated under this article or other authority.

Sec. 26-4. Littering and illegal dumping.
(b) Cleanup and removal. If any person, while transporting or hauling, or causing to be transported or hauled such rubbish or solid waste material, or earth excavation, coal or other material, shall throw, drop or deposit or cause to be thrown, dropped or deposited, such rubbish or material from the body of the vehicle, in violation of the provisions of this subsection, such person must clean up and remove such rubbish or material in a manner and within a time satisfactory to the public works code enforcement officer. Should any owner or person refuse or fail to comply with such notice, the department of public works and utilities may clean up and remove such rubbish and material and the town shall collect the cost of such cleaning up and removal from such person.

Sec. 26-41. Limitations on service.
(b) Existing multi-family complexes with three or more units receiving service prior to July 1, 2005.
(1) The department of public works and utilities shall be responsible for the collection and removal of not more than four solid waste containers of 32-gallons capacity and each weighing not more than 25 pounds on its prescribed collection days at the cost prescribed annually in the town's budget for the fiscal year.
(2) All solid waste containers shall be placed in easily accessible, ground level areas. The department of public works and utilities shall not be responsible for the collection and removal of solid waste containers below ground level or on second floors of buildings. The department of public works and utilities shall not be required to enter any building, store, shed, fenced area or any other closed structure for the collection of solid waste.
(c) Roll-out cart curbside service.
(1) The department of public works and utilities shall be responsible for the collection and removal of solid waste containers of not over 95-gallon capacity on its prescribed collection days at the cost prescribed annually in the town's budget for the fiscal year.

Sec. 26-43. Precollection practices.
(b) Solid waste containers.
(1) Existing multi-family complexes with three or more units receiving service prior to July 1, 2005
a. Every person producing or having solid waste shall provide and keep on the premises or property occupied or used by him sufficient solid waste containers to handle all accumulations of solid waste on such premises or property in the intervals between collections by the department of public works and utilities; provided, that nothing in this subsection shall be interpreted to increase the limitations on service otherwise prescribed in this article.
(2) Roll-out cart curbside service.
a. The town shall furnish each solid waste collection customer with a roll-out cart. This container shall be used by each residential solid waste collection customer to store solid waste materials. It shall be the responsibility of each customer to maintain that container in a functional state of repair and to report any damage to or loss of that container immediately to the department of public works and utilities. Each container is and shall remain the property of the town and shall remain at a customers' residence after that customer has moved or otherwise vacated the dwelling.
(d) Storing of solid waste.
(2) Every owner and every occupant or other persons in control of any building or land in the town, including vacant property, shall be kept the same in a clean and orderly condition, shall not allow solid waste to accumulate in any building or on any land (vacant or occupied), and shall deposit solid waste for collection by the department of public works and utilities in accordance with the provisions of this article and the town solid waste collection policy.

Sec. 26-115. Recycling containers.
The town shall furnish each solid waste collection customer with a special container which is specifically designed for the collection of recyclable solid waste materials. This container shall be used by each residential solid waste collection customer to store recyclable solid waste materials. It shall be the responsibility of each customer to maintain that container in a functional state of repair and to report any damage to or loss of that container immediately to the department of public works and utilities. Each container is and shall remain the property of the town and shall remain at a customers’ residence after that customer has moved or otherwise vacated the dwelling.

Sec. 28-2. Street crossing--Construction; materials.
All railroad street crossings in the town shall be constructed so as to maintain a uniform grade over the entire width of the street intersection. Methods and materials approved by the railroad and the town engineer Director of Transportation and Facilities shall be used for the construction of the crossing. When the roadbed of the railroad shall be lower than the street, the incline shall be uniform and gradual. Where crossings cannot be constructed so as to meet the above requirements, elevated crossings shall be constructed according to such plans as shall be submitted to and approved by the town engineer Director of Transportation and Facilities.

Sec. 28-11. Same--Penalty; payment of costs.
(b) The department of public works and utilities shall send to any person responsible for additional expense to the town an itemized statement of the expense incurred and a request for reimbursement. The town attorney is authorized to bring suit in the name of the town to recover any such unpaid expenses and civil penalties.

Sec. 28-46. Financial policy; criteria.
(a) The town will require the developer of a site or subdivision within the town’s jurisdiction to fund the installation of sidewalk in accordance with the requirements of the town standard specifications and details manual as a part of the proposed development. The town shall fund the construction of sidewalk improvements approved for inclusion as a part of a proposed thoroughfare project. The town shall assess at an established unit price per foot, equating to the property owners paying 50 percent of the cost of installing paved sidewalk along any streets in which the abutting property owners request the installation of sidewalk. All financing by the town by assessing the cost of constructing the sidewalk against abutting properties shall be accomplished in accordance with the provisions of the Charter of the town and the General Statutes of North Carolina, and in accordance with the following:

   (1) A petition must be filed with the town engineer Director of Transportation and Facilities. The petition must be signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all the linear footage of frontage of the property abutting on the street or portion thereof to be improved. The petition must outline the reasons for the installation of the requested sidewalk. The petition must specify that 50 percent of the cost of the improvement shall be assessed against the properties abutting upon both sides of the street or portion thereof to be improved.

   (2) In the event the town council is satisfied that all of the conditions set forth in subsection (1) above have been met, the town council may approve the construction of the requested sidewalk. The town engineer Director of Transportation and Facilities shall provide an estimate of the cost for the construction of the requested sidewalk. The town council shall also appropriate funds for the construction of the requested sidewalk if approved for construction.

Sec. 28-69. Curbs and gutters.
(b) Compaction tests meeting town standards and specifications for streets, including curb and guttering areas, shall be provided at the expense of the developer or owner when directed by the town engineer Director of Transportation and Facilities or town manager.
(Code 1976, § 14-23; Code 1982, § 17-45)

Sec. 28-99. Exceptions.
(a) This division may not apply to all objects located within sight distance areas such that some objects may not significantly obstruct the required visibility of the driver. The driver may be able to see over, under or around some objects within sight distance areas. Objects that may be required within sight distance areas include fire hydrants, utility poles and traffic control devices which are located to minimize visual obstruction. Other objects 12 inches in diameter and smaller, such as tree trunks and sign posts, may be allowed within sight distance areas if located individually or in combination so as to not substantially restrict the driver's view. The determination of what objects, if any, may be located within sight distance areas shall be made by the town engineer Director of Transportation and Facilities. Trees greater than 12 inches in diameter and located in the street right-of-way shall be evaluated in accordance with other applicable town policies and requirements.

Sec. 28-129. Permit to alter street.
(d) All applications for permits pursuant to this section shall be accompanied by a permit and inspection fee as outlined in the fee schedule, which is adopted with the fiscal year budget. Any person making application for a permit pursuant to subsection (a) or (b) of this section shall, before such permit is issued, file with the inspections and permit office a deposit of money, cashier's check or a bond in some surety company authorized to do business in North Carolina in the amount of 1 1/2 times the town engineer's Director of Transportation and Facilities' estimated cost of the work to be done, guaranteeing the faithful performance of such work. The requirement for a deposit or bond shall not apply to the application for a Permit for Minor Encroachment pursuant to Sec. 28-167.

Sec. 34-12. Schedule of traffic and parking regulations; incorporation by reference.
(a) Whenever the provisions of this chapter establish specific traffic and parking regulations and restrictions which are effective only upon certain streets, parts of streets or street areas which are not generally identifiable, or at certain times or for periods of time which are not generally applicable, such traffic and parking regulations, and the locations and/or times where and when the same are effective shall be set out upon official traffic schedules, as amended from time to time by the Town Council or the Director of Engineering Transportation and Facilities as appropriate, and retained permanently in the office of the Town Clerk.

Sec. 34-75. Traffic control signal preemption.
(a) The fire chief, police chief and town traffic engineer director of transportation and facilities are authorized to select such traffic signals controlled intersections they concurrently deem advisable for installation of emergency vehicle traffic signals preemption.
(c) If such traffic signals are located at the intersection of one or more state highways, and funds are approved, the town traffic engineer director of transportation and facilities shall submit the concurrent preemption installation request, and a copy of the ordinance from which this article is derived, to the department of transportation and facilities for its approval.

Sec. 36-12. Right of entry.
The director of public works and utilities or the finance director, or any of the assistants of either, shall have the right to enter, at any reasonable time, any premises for the purposes of billing for services, reading meters, assessing hazards for cross connection control on potable water lines or operating or maintaining any part of the waterworks or sewer works systems as required by this chapter or by the sewer use ordinance.

Sec. 36-37. Permit for construction or operation of, or change to, water distribution system, wastewater collection system, or reclaimed water system--Prohibited activities; application; conformance.
(b) Any person proposing to undertake any thing or activity described in subsection (a) of this section shall make timely and proper application on such form(s) as may be prescribed by the town engineer, Director of Utilities, or his or her designee, (hereafter "director") and provide such information as may be required by the director. A copy of all applications for permits subject to this section and of all approved permits and plans shall be provided to the state department of environmental quality (DEQ), and natural resources (DENR) pursuant to applicable law.

Sec. 36-76. Separate meters.
(b) Waivers from this "separate meter" requirement for existing nonresidential irrigation systems may be granted by the director of public works and utilities ("director") within 18 months after the effective date of the ordinance from which this section is derived, if:

Sec. 36-80. Water service provided by town includes only alternate day outdoor irrigation.
(d) Penalties. Penalties for violation of this section are as set forth herein. The town may use any one, or combination, of penalties and enforcement mechanisms. Imposition of one or more penalties for any violation shall not excuse any violation or permit it to continue.

(1) Civil penalties. After the second notice a violation of this section shall subject the violator to a civil penalty as set forth in the town budget fee schedule. Violators shall be issued a written citation that must be paid within two weeks of the service date of the citation. The citation may be served by personal delivery or by certified or registered mail, return receipt requested. The citation shall describe the violation and shall specify the amount of the civil penalty levied. The civil penalty is collectible in a civil action in the nature of debt. The town attorney, or designee, is authorized to file suit on behalf of the town to collect any unpaid citations, and the town manager, the town utilities director, or their designee, is authorized to verify and sign complaints on behalf of the town in such suits. The director of public works and utilities or designee, a police officer, or other town employee duly authorized to enforce the alternate day watering service level may issue a citation for violations of this section.

Sec. 36-81. Water shortage response.
(a) Purpose and intent. This section 36-81 is designed to maintain and protect the public health, safety and welfare by providing a process for reducing demand for potable water to protect the potable water resources of the town during actual or potential water shortages. This section identifies types of water shortages and authorizes the manager to issue a water shortage declaration and to execute the Town's Water Shortage Response Plan (WSRP). This section shall be liberally construed to implement such purpose and intent.
(b) Definitions. The following definitions apply, except where the context clearly indicates a different meaning:

(1) Customer means any person in whose name the town maintains an account for water use, or who is responsible for payment of water passing through a particular meter. All customers are responsible for any use of water that passes through the meter for which they have an account or are otherwise responsible and are deemed to be users hereunder.

(2) Manager means the Town Manager for the Town of Cary or designee, or, in the absence of the Town Manager, the Deputy Town Manager, Assistant Town Manager or designee.

(c) Water Shortage Response Plan. The town director of public works and utilities ("director") is hereby authorized to prepare a Water Shortage Response Plan (WSRP) to be reviewed and approved in accordance with N.C.G.S. Section 143-355.2. The water conservation measures contained in the WSRP may be more stringent than the minimum water conservation measures required by N.C.G.S. Section 143-355.2. The WSRP, and any amendments to it, shall be adopted by the Town Council.

(f) Application, violation, enforcement, penalties.

(5) Variance. Any person may submit an application to the public works and utilities director for a variance from specific requirements of the WSRP, using the process defined in the WSRP.

Sec. 36-183. Fat, oil, and grease control.
(c) Grease interceptor installation, maintenance, recordkeeping, and grease removal.
(1) Grease interceptors shall be installed and maintained at the user's expense, when a User operates a food service establishment. Grease interceptors may be required in noncooking or cold dairy and frozen foodstuffs establishments and other industrial or commercial establishments when the establishment generates wastewater containing fat or grease and the director determines an interceptor is necessary to prevent contribution or accumulation of grease to the sanitary sewer collection and treatment system. Upon notification by the director or designee that the user is subject to the terms of an enforcement action, as stipulated in the FOG enforcement response plan, said user shall not allow wastewater discharge concentration from subject grease interceptor to exceed an establishment action level of 200 milligrams per liter, expressed as hexane extractable material. All grease interceptors shall be of a type, design, and capacity approved by the director and shall be readily and easily accessible for maintenance and repair, including cleaning and for town inspection. All grease interceptors shall be serviced and emptied of accumulated waste content as required in order to maintain minimum design capability or effective volume of the grease interceptor, but not less often than every 60 days or as permitted in a valid program modification. Users who are required to pass wastewater through a grease interceptor shall:

3. Attain and adhere to the criteria listed below:
   c. If the user performs on-site grease interceptor treatment pursuant to a modification granted under subsection 36-183(g)(5) below, user shall:

Sec. 36-204. Reclaimed water system part of town utility system and other definitions.
(b) For the purpose of this article, the definitions contained in this section shall apply unless otherwise specifically stated.

Department means the department of public works and utilities.
Director means the Director of public works and utilities of the town of Cary and his or her designee.

LAND DEVELOPMENT ORDINANCE

2.8.2 STAFF DEPARTMENTS: Development Review Committee
The Development Review Committee is composed of multiple Town staff departments working together to render decisions on applications as a single decision-making body. The Town staff departments with review and decision-making responsibilities under this Ordinance include, but are not necessarily limited to, the: Planning, Administration, Transportation and Facilities, Inspections and Permits, Fire, Parks Recreation and Cultural Resources, Public Works, and Water Resources Departments.

3.12 DEVELOPMENT IN FLOOD HAZARD AREA

3.12.1 Stormwater Engineering Manager
The Water Resources Department shall appoint one or more a Stormwater Engineering Managers whose duties shall include, but are not limited to, the following:

3.12.2 Permit and Approval Requirements
(B) Development Requiring Other Forms of Town Approval
The Town requires no separate permit to demonstrate that the proposed development meets the flood damage prevention standards set forth in
Section 7.5 of this Ordinance when this Ordinance requires some other form of approval for
the proposed development (such as a building permit, certificate of occupancy, special use
permit, site plan approval, or subdivision plat approval). However, the applications for those
other forms of development approval shall require the submission of additional information
relating to flood hazards as part of the application package. As part of the staff review
process for those other forms of development approval, the Stormwater Services Manager shall review the application to ensure that it meets the flood damage prevention standards set forth in Section 7.5.

(C) Development Requiring No Other Forms of Town Approval; Floodplain Development Permit Required
In those cases where no other form of approval is required for the proposed development,
the development shall not proceed until and unless the Water Resources Department Town
issues a floodplain development permit for the proposed development. The person
undertaking such development shall file an application for a floodplain development permit
with the Stormwater Engineering Manager. The application shall be filed on a form
prescribed by the Stormwater Engineering Manager. The Stormwater Engineering Manager shall review the application and shall issue the permit only if the proposed development conforms to the flood damage prevention standards set forth in Section 7.5 of this Ordinance.

3.12.3 Approval Procedure
(A) Upon receiving any application for development within the Flood Hazard Area, the
Stormwater Services Manager shall determine whether the proposed development meets
the flood damage prevention standards set forth in Section 7.5.
(B) If the Stormwater Services Manager determines that the proposed development does not
meet these standards, then the Town shall issue no permit, certificate, or other form of
approval for the proposed development.
(C) In those cases where this Ordinance requires some other form of approval for development
in the Flood Hazard Area, the Stormwater Services Manager shall report its determination
to the body or agency responsible for the issuance of that other form of development
approval, within a reasonable amount of time for that body to act accordingly in approving
or denying the proposed development.
(D) In those cases where no other form of approval is required for the proposed development in
an area of special flood hazard, the Stormwater Services Manager shall notify the applicant
of its determination within a reasonable amount of time.

3.12.4 Appeals
(A) All questions on the enforcement of this section shall first be addressed to the Stormwater
Services Manager. The decisions of the Stormwater Services Manager may be appealed
by following the procedure set forth in Section 3.21, but the appeal shall be to the Town
Council, not the Zoning Board of Adjustment.
(B) The Town Council Zoning Board of Adjustment may grant relief from a decision of the
Stormwater Services Manager only if the Town Council Board finds that the Stormwater
Services Manager acted incorrectly in interpreting or administering any of the duties or
functions listed under Section 3.12.1; other provisions of this Section 3.12; or
Section 7.5, Flood Damage Prevention. The Zoning Board of Adjustment has no authority
or power to hear a decision based on this Section 3.12.

3.13 GRADING PERMITS

3.13.1 Purpose and Scope
This section sets forth the procedures for obtaining a grading permit for development and land-
disturbing activities within the Town and its extraterritorial jurisdiction. (The standards for control
of sedimentation and soil erosion appear in Section 7.4.)
(A) Applicability
Except as provided in paragraphs (B) and (C) below, it shall be unlawful to conduct any land-disturbing activity without first obtaining a grading permit from the Water Resources Department Town.

3.13.2 Application Requirements
(A) An application for a grading permit shall be filed with the Water Resources Department Town. An application for a grading permit may be filed only by the owner of the property on which the land-disturbing activity is to occur or a contractor, agent, lessee, or contract purchaser specifically authorized by the owner to file such application.

3.13.3 Review and Approval
(A) The Town Water Resources Department shall review each application and shall act to approve, approve with modifications, approve with performance reservations, or deny the application, based on the criteria set forth in Section 3.13.4. The review shall be conducted in conjunction with any site and/or subdivision plan approval that may be required for the proposed development.
(B) Where the application must be revised in accordance with any modifications or performance reservations required by the Town Water Resources Department, the applicant shall submit a revised application to the Town Water Resources Department. The Stormwater Engineering Manager shall approve or deny the revised application.
(C) Upon approval of the application, the Town Water Resources Department shall issue a grading permit for the proposed land-disturbing activity. The applicant shall keep a copy of the grading permit and the approved erosion control plan on file at the job site.
(D) In the event that the Town Water Resources Department disapproves the application, the Town shall advise the applicant in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Town's decision to deny or modify the proposed application by following the appeals procedure set forth in Section 3.21, but the appeal shall be to the Town Council, not the Zoning Board of Adjustment. If the Town Council Zoning Board of Adjustment upholds the denial or modification of the application, then the applicant may appeal this decision to the North Carolina Sedimentation Control Commission as provided in G.S. 113A-61(C) and N.C. Administrative Code Title 15, 4B.0018(b). Alternatively, the applicant may appeal the disapproval of the plan directly to the Commission, in accordance with G.S. 113A-61, without appeal to the Town Council Zoning Board of Adjustment.

3.13.4 Approval Criteria
(A) The Town Water Resources Department shall approve only those applications that are shown to have the potential to control accelerated erosion and prevent off-site siltation at least the equivalent in effectiveness, safety, quality, and durability of that prescribed in the current edition of the "Erosion and Sedimentation Control Planning and Design Manual" published by the North Carolina Sedimentation Control Commission.
(B) The Town Water Resources Department may deny the application for any of the following reasons, if the applicant, or any parent or subsidiary corporation (if the applicant is a corporation) meets any of the criteria set forth below. For purposes of this subsection, an applicant's record may be considered for only the two (2) years prior to the application date.

3.13.5 Effect of Approval; Certificate of Erosion Control Compliance
(B) The land-disturbing activity shall not begin until the Stormwater Services Manager has inspected these initial measures and issued a certificate of erosion control compliance indicating that these initial measures conform to the approved application.

3.13.6 Responsibility for Maintenance and Additional Erosion Control Measures
(C) Whenever the Town determines that significant sedimentation is occurring as a result of a land-disturbing activity, despite the application and maintenance of protective practices, the person conducting the land-disturbing activity or the person responsible for
maintenance shall be required to take additional protective action as the Town Water Resources Department deems necessary to control the sedimentation.

3.13.7 Changes to Approved Erosion Control Plans

(A) Changes Initiated by Department
Following commencement of a land-disturbing activity pursuant to an approved grading permit, if the Town Water Resources Department determines that the approved application is inadequate to meet the requirements of this Ordinance, then the Town Department may require such revisions to the plan as are necessary to comply with the Ordinance.

(B) Changes Initiated by Applicant
The applicant may apply at any time to amend a grading permit, in written and/or graphic form, under the same conditions and following the same procedure as the original application. Until such time as the Town Water Resources Department approves such an amendment, the land-disturbing activity shall not proceed except in accordance with the application as originally approved.

4.4 OVERLAY ZONING DISTRICTS

4.4.3 Conservation Residential Overlay District

(H) Additional Design Requirements
(5) No lot(s) shown on a development plan may be cleared or graded until the building permit for the lot is approved. Exceptions to this requirement may be considered based on factors related to the installation of roadways, public utilities or significant topographic issues. This exception must be approved by the Town Water Resources Director based on written justification.

4.4.6 Watershed Protection Overlay

(G) Engineered Stormwater Control Structures

(8) Inspections for Stormwater Control Structures
(a) The Stormwater Manager Management Engineer shall inspect the stormwater control structure after the owning entity notifies the Stormwater Manager Management Engineer that all construction-related work has been completed. At this inspection, the owning entity shall provide:
(b) The Stormwater Manager Management Engineer shall review the documents submitted by the owning entity and the Town's inspection report.
1. If the Stormwater Manager Management Engineer approves the inspection report, deed and easements, and accepts the certification, the owning entity shall file the Operation and Maintenance Agreement, deed and easements with the Wake County Register of Deeds and provide proof of recordation to the Stormwater Manager Management Engineer. Upon receipt of proof of recordation, the Stormwater Manager Management Engineer will issue a Certificate of Watershed Protection.
2. If deficiencies are found, the Stormwater Manager Management Engineer shall direct the owning entity to correct the deficiencies, make improvements and inspections and/or correct documents and resubmit proof of the corrections and/or improvements to the Stormwater Manager Management Engineer.
(d) The owner of each stormwater control structure shall submit a Maintenance Inspection Report annually on the anniversary date of the Operation and Maintenance Agreement recording, to the Stormwater Manager Management Engineer. A qualified professional, licensed in the state of North Carolina, must conduct the inspection. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Environmental
Management and shall be provided to the Stormwater Manager in a timely manner.

(e) In the event the annual inspection reveals the need for corrective action or improvements, the Stormwater Manager shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual as provided by section 4.4.6(G)(7)(b). After all corrective actions have been taken, the qualified professional shall re-inspect the stormwater control structure and certify to the town that the appropriate corrective actions have been taken.

(f) Appeals of any order, requirement, decision or determination made by the Stormwater Manager may be made to and decided by the Town Council.

(9) Maintenance and Upkeep

(c) Except for general landscaping and grounds management, the owning entity shall notify the Stormwater Manager prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After all repairs have been completed, the owning entity shall engage the services of a qualified professional, licensed in the state of North Carolina, to inspect said improvements and to issue a report to the Stormwater Manager. The owning entity shall perform all additions, changes, or modifications noted in the inspection report supplied by the qualified professional in a timely manner.

(d) The Stormwater Manager retains the right to perform inspections, deemed necessary by the Stormwater Manager, on any stormwater control structure.

(e) Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Stormwater Manager. Proposed changes shall be prepared by a qualified professional.
   1. If the Stormwater Manager approves the proposed changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the Office of the Stormwater Manager.
   2. If the Stormwater Manager disapproves the changes, the proposal may be revised and resubmitted to the Town Council as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.

(f) If the Town Council or Stormwater Manager finds that the operation and maintenance plan or manual is inadequate for any reason, the Stormwater Manager shall notify the owning entity of any required changes and the owning entity shall prepare and file copies of the revised agreement first with the Wake County Register of Deeds. The owning entity shall then file a copy certified by the Register of Deeds with the Office of the Stormwater Manager.

(J) Violations; Enforcement
This Section 4.4.6 shall be enforced by the Town Manager or his designee. Any person or association who fails to comply with any provision of this Section 4.4.6, or who fails to submit a report, or who submits a fraudulent or false report, shall be in violation of this Ordinance for each occurrence or non-compliance.
5.4 TEMPORARY USES AND STRUCTURES

5.4.5 General Requirements for All Temporary Uses and Structures
All temporary uses or structures shall meet the following general requirements, unless otherwise specified in this Ordinance:

(J) Applications for temporary structures to be located in or near the one percent (1%) annual chance floodplain will be required to submit a plan to the Stormwater Manager Management Engineer for the removal of such structure(s) in the event of a hurricane or flash flood notification. The plan must include the following information:

5.4.6 Specific Regulations for Certain Temporary Uses and Structures

(F) Temporary Structures In or Near the Flood Hazard Area
Prior to the issuance of any development permits for a temporary structure in the Flood Hazard Area, all applicants must submit to the Stormwater Manager Management Engineer, for review and written approval, a plan for the removal of such structure(s) in the event of a hurricane or flash flood notification. The plan shall include the following information:

7.2 LANDSCAPING, BUFFERING, SCREENING, AND TREE PROTECTION: Urban Transition Buffer Regulations

(B) Establishing General Urban Transition Buffers
(2) General UTBs are applied to specific properties as follows:
(a) Where the specific origination point of a stream regulated under subsection (B)(1)(a) is in question upon request of the NC Division of Water Resources ("Division") or another party, the Town shall make an on-site determination. A Town representative who has the training required by 15A NCAC 02B .0267 shall establish that point using the methods described by 15A NCAC 02B .0267. Any disputes over said on-site determinations shall be referred to the Director of the Division of Water Resources c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. Chapter 150B.

(N) Violations; Fines; Enforcement
(1) This Section 7.2.14 shall be enforced by the Town Manager Director of Water Resources or his designee. Any person who fails to comply with any provision of this Section 7.2.14 shall be in violation of this Ordinance for each occurrence or non-compliance. The disturbance or damage of vegetation within the UTB shall constitute a violation of this Ordinance. For purposes of this Section 7.2.14, "disturbance" shall be defined as any action that results in injury or harm to required trees, shrubbery, or other vegetation. The owner(s) of the property which term includes their agents, heirs, and assigns, shall be fined and shall replace the disturbed or damaged vegetation as set forth in subsections (N)(2) and (N)(3). In addition, the Town of Cary may assess civil penalties in accordance with Chapter 11 of the LDO. Each day that the violation continues shall constitute a separate offense.

(3) A fine of between two dollars ($2.00) and four dollars ($4.00) for every square foot area used by the disturbed or damaged vegetation within the UTB shall be imposed. In determining the amount of the fine, the Town Manager or designee Water Resources Director shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and whether the violation was committed willfully. Fines imposed pursuant to this subsection may be appealed pursuant to Section 11.2.2(D).

(O) Delegation of Authority
Any act authorized by this Section 7.2.14 to be carried out by or at the direction of the Town may be carried out by the Town Manager, Director of Water Resources, or designee of either such official.

7.3 STORMWATER MANAGEMENT

7.3.6 Illegal Discharges to the Storm Sewer System

(I) Industrial or Construction Activity Discharges

(1) Submission of Notice of Intent to the Town of Cary

(c) The copy of the Notice of Intent may be delivered to the Town Manager either in person or by mailing it to: Notice of Intent to Discharge Stormwater, Stormwater Services Manager, 316 N. Academy Street, Cary, NC 27513.

(M) Violations, Enforcement, and Penalties

(3) Notice of Violation

Whenever the Town Manager finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Town Manager may order compliance by written notice of violation to the responsible person. The Notice of Violation shall contain:

(f) A statement that the determination of violation may be appealed to the Stormwater Services Manager by filing a written notice of appeal within thirty (30) days of service of notice of violation; and

(6) Civil Penalties

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within five days, or such greater period as the Stormwater Services Manager shall deem appropriate, after the Stormwater Services Manager has taken one or more of the actions described above, the Stormwater Services Manager may impose a penalty not to exceed one thousand dollars ($1000) (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

(R) Remedies Not Exclusive

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Stormwater Services Manager to seek cumulative remedies. The Town of Cary may recover all attorney's fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

7.4.3 SOIL EROSION AND SEDIMENTATION CONTROL: General Erosion and Sedimentation Control Standards

All persons conducting land-disturbing activities shall take all reasonable measures to protect all public and private property from damage by such activities. Any and all state and/or federal standards apply and must be met. In situations where state and/or federal rules conflict with the provisions of this section, the more restrictive shall apply. All land-disturbing activities, except for those exempted by Section 3.13.1 of this Ordinance, shall meet the following standards:

(A) Conveyance Channels

(3) Alternative and innovative measures to satisfy the intent of this paragraph (A), applied either alone or in combination, may be used if there are no objectionable secondary consequences and the applicant can demonstrate to the Stormwater Services Manager that such measures have the potential to keep stormwater...
discharge velocities from creating an erosion problem in the receiving watercourse. Some alternative measures include:

(G) **Limits on Single-Family Lot Grading**
Grading and Erosion Control Plans submitted as part of a site/subdivision plan associated with residential development that has a gross density of three (3) units per acre or less are limited to clearing and disturbing only the land area required to install the infrastructure to serve the development (e.g., sewer and water lines, roads, storm water devices, greenways, and similar infrastructure). Until a building permit is issued for a lot, each lot must remain undisturbed, with the exception of portions of a lot impacted by the installation of infrastructure. Exceptions to grade upon a lot prior to the issuance of a building permit may be granted as a modification to the original plan approved by the Town Director of Water Resources, if there is sufficient justification (e.g., problematic drainage issues and/or severe topographic issues).

(H) **Limit on Grading Area for Medium Density Residential Developments**
Site/subdivision plans containing residential development with a gross density not exceeding eight (8) units per acre shall not grade more than twenty-five (25) acres per phase or section of development. Each twenty-five (25) acre phase or section of development must be stabilized and seeded meeting the requirements of this ordinance prior to grading an additional phase or section of development. Exceptions to this requirement may be granted as a modification to the original plan approved by the Town Director of Water Resources if compliance is not practicable due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot.

7.5 **FLOOD DAMAGE PREVENTION:**

7.5.1 **Purpose; Enforcement**

(D) This Section 7.5 shall be enforced by the Town Manager Director of Water Resources or his designee. Any person who fails to comply with any provision of this Section 7.5 shall be in violation of this Ordinance.

7.5.2 **Applicability**

(B) **Exemptions**

(3) Site and/or subdivision plans submitted prior to May 10, 2001, and all new residential construction or substantial residential improvements proposed on a platted lot that is located within the Special Flood Hazard Area or Future Conditions Flood Hazard Area, but was not so located at the time it was platted, shall be exempt from the requirement to obtain a special use permit for filling in the flood fringe portion of the Special Flood Hazard Area or the Future Conditions Flood Hazard Area but shall submit a floodplain development permit application. An engineering study must be performed to determine whether an adverse impact will result from filling in the flood fringe portion of the Special Flood Hazard Area or Future Conditions Flood Hazard Area and must be submitted with the floodplain development permit application. For purposes of this Section 7.5.2, an "adverse impact" includes, but is not limited to, a reduction of floodplain storage greater than ten (10) percent, an increase in one hundred (100) year average channel velocities greater than ten (10) percent, or the potential for aggravating a known existing drainage problem as determined by the Stormwater Manager Town of Cary Floodplain Administrator. If an adverse impact will result, the construction or improvements must meet the requirements for new non-residential construction and substantial improvements to non-residential construction contained in Section 7.5.3(C) and (D)(2).

7.5.3 **Development Restrictions and Related Standards In and Near Special Flood Hazard Areas and Future Conditions Flood Hazard Areas**
(E) Application Requirements

(1) Application for a floodplain development permit shall be made to the Stormwater Manager floodplain administrator prior to any development activities located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The following items shall be presented to the Stormwater Manager floodplain administrator to apply for a floodplain development permit:

(3) Certification Requirements

(a) Elevation Certificates

1. An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Stormwater Manager floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. The Stormwater Manager floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

2. An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Stormwater Manager floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Stormwater Manager floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

3. A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Stormwater Manager floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Stormwater Manager floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(b) Floodproofing Certificate

If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Stormwater Manager floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Stormwater Manager floodplain administrator shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the
certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(F) Additions/Improvements

(6) Temporary Non-Residential Structures
Prior to the issuance of a Floodplain Development Permit for a temporary structure, the applicant must submit to the Stormwater Manager floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Stormwater Manager floodplain administrator for review and written approval;

7.5.6 Cross Drainage Area Standards and Restrictions
For any new proposed development subject to flooding which includes, but is not limited to, those lots along any significant watercourse, whether or not the stream or water course is enclosed with a pipe or culvert; the applicant shall make a determination of the crest elevation of the flood expected to be equaled or exceeded that has a one (1) percent chance of annual occurrence in accordance with generally accepted engineering practice, which is to be submitted with the seal and signature of a Professional Engineer to the Town Director of Water Resources. Any new construction of, or substantial improvements (see Chapter 12, Definitions) to, any residential or non-residential structure shall comply with Section 7.5.3(C).

8.1 SUBDIVISION AND SITE PLAN GENERAL PROVISIONS

8.1.4 Improvements

(4) Utilities

All permitted and special uses shall be connected to and served by public water and sanitary sewer facilities; however, uses in the R-80 zoning district may be served by private wells and/or septic systems. Uses proposed in new subdivisions within the R-40 zoning district shall be connected to public water and sanitary sewer facilities unless exceptions are granted by the Town Council. In some cases, the Director of Water Resources Utilities may grant an exception to allow the use of private wells and/or septic systems for uses within other zoning districts provided that the anticipated water and/or wastewater requirements are minimal and that all County governmental agencies have approved the proposed use to operate with a private well and/or septic system.

(H) Easements

No part of any structure, permanent equipment, private utility line (including water, irrigation, and sewer lines) or impoundment may be placed, and no grading may occur within any Town of Cary easement prior to obtaining full site plan approval, a building permit, or an encroachment agreement from the Transportation and Facilities and/or Water Resources Utilities Department(s). An encroachment agreement may allow fences to cross easements provided that appropriate access gates have been installed to allow maintenance. Any application for an encroachment agreement must include plans to facilitate access and maintenance of the utility, and must include any documentation which the Town needs to determine that no damage will occur to the utility. The Town will not be held liable for damage to any encroachment during maintenance to the utility.

8.1.5 Payment of Fees in Lieu of Required Improvements
Any owner or developer who is required to dedicate or install improvements pursuant to Section 8.1.4 above may make a payment of fees in lieu of such improvements, or part thereof, in accordance with the following:

(2) **Approval by Water Resources Director of Utilities**

The Water Resources Director of Utilities may approve payment in lieu of required utility improvements, including reclaimed water lines, provided that:

(b) The amount of the payment shall be one hundred (100) percent of the actual installation and construction cost of such improvements (except as provided below), as estimated by a registered professional engineer selected by the applicant and approved by the Water Resources Director of Utilities. The Water Resources Director of Utilities may approve a payment in lieu of less than one hundred (100) percent of the actual installation and construction costs of such improvements if the required utility improvements are located on or adjacent to Town-owned property, upon determining that such improvements are not necessary or desirable at the present time.

11.2.3 RESPONSIBILITY FOR ENFORCEMENT AND APPEALS: Inspections

The Directors of Planning, Development Services, Transportation and Facilities, Water Resources, Public Safety, and/or Inspections and Permits or their designees shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this Ordinance.

11.4.6 REMEDIES AND PENALTIES FOR EROSION AND SEDIMENTATION CONTROL VIOLATIONS PURSUANT TO SECTION 7.4: Require Restoration of Disturbed Areas

The Town Water Resources Director may require a person who engaged in a land-disturbing activity regulated under Section 7.4 and failed to retain sediment generated by the activity as required by G.S. 113A-57(3) to restore the waters and lands affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter or the General Statutes.

12.2 RULES OF CONSTRUCTION, USE CLASSIFICATIONS, AND DEFINITIONS: Other Key Terms Defined

**FLOODPLAIN ADMINISTRATOR**

The individual appointed to administer and enforce the floodplain management regulations.

**STORMWATER MANAGER MANAGEMENT ENGINEER**

An official or officials of the Town of Cary responsible for administration and enforcement of the Town's ordinances pertaining to sedimentation and erosion control, floodplain management, and stormwater management. May also been known as the Stormwater Manager or Watershed Administrator.

<table>
<thead>
<tr>
<th>Item C  Minor and Technical Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Planning Director Authority</td>
</tr>
</tbody>
</table>

Text in italics is provided for reference only. No changes are proposed.

4.2.3 **GENERAL USE DISTRICTS: PDD - Planned Development Districts**
(D) General Use and Development Standards for All PDD District

(B) Conditions in the Master Plan

In some cases, the ability to implement or strictly follow approved master plan conditions can be problematic (i.e. conditions requiring specimen trees to be preserved, but the trees have subsequently died due to natural causes following the approval). In such cases, the Planning Director shall implement the condition in a way that most closely meets its original intent. These situations include, but are not limited to:

(a) Undisturbed buffers/streetscapes required by the master plan which may be beyond the Town's ability to implement due to road widenings, utility relocation, driveways and/or clear sight distance areas;

(b) Specimen or champion trees required by the master plan to be preserved, but which have been removed due to natural consequences or infrastructure relocation.

4.3.5 CONDITIONAL USE DISTRICTS: Applicable Regulations

(A) All standards and requirements that apply to the corresponding general use district shall apply to the conditional use district.

(B) Conditions imposed on a conditional use district may be no less restrictive than those standards applying to the corresponding general use district.

(C) Existing conditional use limitations in a conditional use district shall become null and void if future amendments to this Ordinance require stricter standards than those imposed under existing conditional use zoning.

(D) In some cases, the ability to implement or strictly follow approved conditional use zoning conditions can be problematic (e.g., conditions requiring specimen trees to be preserved, but the trees have subsequently died due to natural causes following the approval). In such cases, the Planning Director shall implement the condition in a way that most closely meets its original intent. These situations include, but are not limited to:

(a) Undisturbed buffers/streetscapes required by the master plan which may be beyond the Town's ability to implement due to road widenings, utility relocation, driveways and/or clear sight distance areas;

(b) Specimen or champion trees required by the master plan to be preserved, but which have been removed due to natural consequences or infrastructure relocation.

4.5.1 FLEXIBLE USE DISTRICTS: Flexible Use Districts Generally

(C) Conditions

(1) The flexible use rezoning application shall include a master land use plan, preliminary development plan or site / subdivision plan that specifies the use or uses that are intended for the property, as well as any additional conditions on the use of the property that the applicant may propose as conditions of the rezoning. Conditions are limited to:

(a) Those that address conformance of the development and use of the site to applicable ordinances, policies, standards and officially adopted plans and

(b) Those that address the impacts reasonably expected to be generated by the development and use of the site.

(2) No condition shall be made part of the application, or shall be attached to approval of the conditional use district, which specifies the ownership status, race, religion, or character of the occupants of housing units, the minimum value of improvements, or any illegal exclusionary device; or which states that the use of the property will not be subject to
regulations or restrictions set forth in this Ordinance which would apply to the property in any event, such as the regulations for an overlay district which covers the property.

(3) In some cases, the ability to implement or strictly follow approved preliminary development plan conditions can be problematic (i.e. conditions requiring specimen trees to be preserved, but the trees have subsequently died due to natural causes following the approval). In such cases, the Planning Director shall implement the condition in a way that most closely meets its original intent. These situations include, but are not limited to:

(a) Undisturbed buffers/streetscapes required by the master plan which may be beyond the Town's ability to implement due to road widenings, utility relocation, driveways and/or clear sight distance areas;
(b) Specimen or champion trees required by the master plan to be preserved, but which have been removed due to natural consequences or infrastructure relocation.

2. Posted Notice

3.1.6 COMMON REVIEW AND APPROVAL PROCEDURES: Notice Requirements

(A) Content of Notices

All notices required under this Ordinance shall comply with notice requirements set forth in the North Carolina General Statutes. Generally, all published and written notices of public or quasi-judicial hearing should, unless otherwise specified in this Ordinance: (1) identify the date, time, and place of the hearing, (2) if applicable, describe the property involved in the application by street address or by Property Identification Number (PIN) and nearest cross street; (3) describe the nature of the proposed action and in the case of zoning map amendments, that the proposed change may be made to the entire area described or any part or parts of each area to the classification designated or to any more restrictive classification; (4) indicate that interested parties may appear at the hearing and speak on the matter; and (5) indicate where additional information on the matter may be obtained.

(D) Posted Notice

When the provisions of this Ordinance or law require that notice be posted, the Planning Director shall cause a notice to be posted on the property. Such notice should be posted at least ten (10) but not more than twenty-five (25) days prior to the scheduled date of the hearing. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way. Posted notices shall provide information a phone number for interested parties to utilize in order to obtain information regarding the proposed application. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but sufficient notices shall be posted to provide reasonable notice to interested persons.

3. Time Deadline for Filing an Appeal

3.21.3 Filing of Appeal; Effect of Filing

(A) An application for an appeal shall be filed with the Town Clerk. The notice of appeal shall state the grounds for the appeal. Once the application is complete, the Planning Department shall schedule the appeal for consideration at a hearing before the Zoning Board of Adjustment.
(B) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(C) The owner or other party shall have thirty (30) days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt of any source or actual or constructive notice of the decision within which to file appeal. Appeals must be received before 5:00 p.m. EST on the due date to be timely.

4. Approval Authority for Certain Development Plans

3.9.2 SUBDIVISIONS AND SITE PLANS: Common Procedures for Review and Approval of Development Plans

(F) Approval Authority

(1) Approval by Zoning Board of Adjustment
The Zoning Board of Adjustment shall have final decision-making authority on the following types of development plans, which shall be reviewed using the procedure set forth in this Section.
(a) Plans for uses that require approval of a Special; and
(b) Plans that propose one hundred (100) residential units or more, or that would construct one hundred thousand (100,000) square feet of nonresidential floor area or more, or that would construct a new drive-through facility or expand an existing drive-through facility; excepting plans meeting all of the following criteria, which plans shall be reviewed by the Planning Director:
   1. A rezoning for the property was approved within the two (2) calendar years prior to the date of application for the site or subdivision development plan and a traffic impact analysis (TIA) was prepared for the rezoning in accordance with Section 3.4.1(D)(3); and,
   2. The plan is not otherwise subject to review by the Zoning Board of Adjustment pursuant to Section 3.9.2(F)(1).

5. Minor Modification of Approved Development Plans

3.19.2 MINOR MODIFICATIONS: Minor Modifications to Approved Plans, Plats, and Planned Development Master Plans

(B) Exceptions
Any other proposed change to an approved plan not listed above shall be accomplished in the same manner as the original plan approval. In no circumstance shall a modification be granted under this section that results in:

(1) An increase A change in overall project density by more than five (5) percent;
(2) A change in permitted uses or mix of uses;
(3) An increase in building height beyond twenty (20) percent of the structure’s original height; or
(4) A change in a zoning condition.
6. Neighborhood Meeting Procedure

3.4.1 REZONINGS: Rezonings Generally

(D) Procedure

(4) Neighborhood Meeting

(b) Procedure

Neighborhood meetings for complete rezoning applications filed within a given month shall be held concurrently, within approximately four (4) weeks of the published submittal deadline for rezoning applications, with the meeting at a date, time and location established and scheduled by staff. At the neighborhood meeting, each applicant shall conduct a meeting with any attendee interested in that proposed rezoning.

2. Chapter 34, Article X – Automated Red Light Camera Systems, of Code of Ordinances, Town of Cary, North Carolina is hereby deleted.

3. The Town Council hereby directs that a supplement to the Town Code of Ordinances, including Appendix A, Land Development Ordinance, shall be prepared and printed reflecting these amendments.

Adopted: ______________________, 2019
Effective: _____________________, 2019